

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

AUDREY A.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, A.A., D.A., S.A., AND L.A.,
Appellees.

No. 2 CA-JV 2020-0014
Filed June 23, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20190636
The Honorable Scott McDonald, Judge

AFFIRMED

COUNSEL

James L. Fullin, Pima County Legal Defender
By Ruby J. Becker, Assistant Legal Defender, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Vásquez and Judge Brearcliffe concurred.

STARING, Presiding Judge:

¶1 Appellant Audrey A. challenges the juvenile court’s order of January 17, 2020, finding her children—A.A., born July 2002; D.A., born August 2004; S.A., born June 2013; and L.A., born November 2015—dependent on the ground of neglect. *See* A.R.S. §§ 8-201(15)(a)(iii), 8-844(C). On appeal, Audrey argues the court erred because it “did not consider the circumstances as they existed at the time of the dependency adjudication.” Finding no error, we affirm.

¶2 In reviewing an adjudication of dependency, we view the evidence in the light most favorable to affirming the juvenile court’s findings. *Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21 (App. 2005). The Department of Child Safety (DCS) received a report in October 2019 that the children’s father had committed domestic violence against Audrey and their adult son. The children were taken into temporary custody and placed with a relative. In its dependency petition DCS alleged the children were dependent as to Audrey based on neglect in that she allowed the father around them “despite his serious substance abuse” and in that she “expos[ed] them to domestic violence.” Audrey denied the allegations, and the juvenile court held a contested dependency hearing in January 2020. Finding DCS had established the allegations in the petition, the juvenile court found the children dependent as to Audrey “due to neglect.”

¶3 On appeal, Audrey argues the juvenile court abused its discretion in finding the children dependent based on neglect because it “did not consider the circumstances as they existed at the time of the dependency adjudication.” The allegations in a dependency petition must be proven by a preponderance of the evidence. § 8-844(C). We review a dependency adjudication for an abuse of discretion, “deferring to the juvenile court’s ability to weigh and analyze the evidence.” *Shella H. v. Dep’t of Child Safety*, 239 Ariz. 47, ¶ 13 (App. 2016). Accordingly, “[w]e will only disturb a dependency adjudication if no reasonable evidence supports it.” *Id.*

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¶4 A child is dependent if, among other things, his or her “home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.” § 8-201(15)(a)(iii). In determining whether a child is dependent “the juvenile court must consider the circumstances as they exist at the time of the dependency adjudication hearing.” *Shella H.*, 239 Ariz. 47, ¶ 1. But, “domestic violence need not be continuous or actively occurring at the time of the adjudication hearing to support a finding of dependency on these grounds; the substantiated and unresolved threat is sufficient.” *Id.* ¶ 16. In this case, the family’s case manager testified about Audrey:

At this time she does not yet recognize how the pattern of domestic violence impacts her and her family. When she talks about the incidents that have occurred, she continues to minimize the violence that the children were exposed to, the physical harm to the children. And there has also been a very long pattern of her allowing the father back into the home despite things that have occurred. She hasn’t yet sufficiently engaged in treatment to change that pattern.

In support of her argument, Audrey cites favorable testimony about her efforts to distance herself from the children’s father, but does not address this contrary evidence. We do not reweigh the evidence and will defer to the court’s resolution of conflicting inferences if supported by the record. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

¶5 Audrey further contends that dependency “proceedings are not intended to be punitive and as a matter of public policy the Court erred in applying a neglect legal basis on a victim of domestic violence.” But however persuasive her argument may be as a matter of public policy, the legislature has set forth the definitions of dependency, and Audrey’s argument must be addressed to that body. *See Wagenseller v. Scottsdale Mem. Hosp.*, 147 Ariz. 370, 378 (1985) (courts’ freedom to serve as source of public policy limited “as legislation occupies a given field” (quoting *Lucas v. Brown & Root*, 736 F.2d 1202, 1205 (8th Cir. 1984))), *superseded by statute on other grounds, as recognized in Powell v. Washington*, 211 Ariz. 553, ¶ 29 (2006). And she cites no authority to support an argument that the juvenile court otherwise abused its discretion in regard to the ground for dependency.

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¶6 We affirm the juvenile court's order adjudicating Audrey's children dependent.